

Remarks

Claims 1-5, 8, 9, and 12-14 are pending in this application. Of these claims, claims 6-7, 10-11, and 15-70 were previously cancelled. Claims 1, 8, 9, 12, and 13 were previously amended. The Examiner has rejected claims 1-5, 8, 9, and 12-14 under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,787,000 to Lilly et al. (hereinafter “Lilly”) in view of Layden (“A Rapidly Changing Landscape”) (hereinafter “Layden”) and further in view of Manugistics5 (“Manugistics Introduces Industry’s Only Extended Supply Chain Management Solution”) (hereinafter “Manugistics”).

A. Remarks Regarding Rejection of Claims 1-5, 8, 9, and 12-14 Under 35 U.S.C. § 103(a)

A prima facie case of obviousness requires that each and every element of the claims is taught or suggested by the references cited. Applicants respectfully submit that Lilly in view of Layden and further in view of Manugistics does not establish a prima facie case of obviousness with respect to claims 1-5, 8, 9, and 12-14. A prima facie case of obviousness requires a showing that all of the claim limitations of the rejected claims are taught or suggested by the prior art. Manual of Patent Examining Procedure (“MPEP”) 2143 and 2143.03. The establishment of a prima facie case of obviousness requires that *all* the claim limitations be taught or suggested by the prior art. MPEP 2143.01 (emphasis added). “All words of a claim must be considered in judging the patentability of that claims against the prior art.” In re Wilson, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (CCPA 1970).

Lilly in view of Layden and further in view of Manugistics does not teach or suggest all the claim limitations of independent claim 1 from which claims 2-5, 8, 9, and 12-14 depend. As a result, Lilly in view of Layden and further in view of Manugistics does not teach or

suggest each and every claim limitation of claims 1-5, 8, 9, and 12-14. First, Lilly does not teach or suggest generating “a material delivery schedule in response to an outstanding customer order” as required by claim 1. In fact, the system in Lilly is for generating a delivery date of a work order. Lilly at 4:39-44. The Examiner incorrectly states that Lilly discloses using “[r]esource availability, material availability, and work order information ... to schedule the delivery of needed materials.” In actuality, Lilly discusses scheduling each operation of the work order “based upon the resource availability information, the material availability information, and the work order information.” Lilly at 6:65-7:2. If materials are not available, Lilly discusses adjusting the start date/time for an operation of the work schedule according to the lead time of obtaining the materials. Lilly at 8:55-67. This is not the same as generating a delivery schedule based on the date/time the material is needed according to the work schedule as required by claim 1.

Also, Applicants respectfully submit that the cited references, taken alone or in hypothetical combination, do not teach or suggest that “the available inventory of material includes a hub inventory” as required by independent claim 1. The Examiner states that “the source of inventory does not affect the claimed structure or manipulatively alter any of the recited functionality” and treats “hub” “as a non-functional descriptor of the inventory.” Office Action at page 4. By taking this stance, the Examiner has taken out a claim term from claim 1. The Examiner fails to give an interpretation to the term “hub inventory” that is reasonable and consistent with the specification. Applicants emphasize that the Examiner must interpret a claim recitation as one of ordinary skill in the art would reasonably interpret the claim in view of the specification. *See In re American Academy of Science Tech Center*, 70 U.S.P.Q.2d 1827 (Fed. Cir. 2004); *see also* M.P.E.P. § 2111 (describing the standards for claim interpretation during

prosecution). The Examiner has interpreted “hub inventory” according to the cited art and not in a way that is reasonable and consistent with the specification. The term “hub” is clearly defined in the specification. *See* Specification at 7:24-28. Also, the Specification refers to other types of inventory, in particular the Specification references “in-house” inventory. Specification at 17:8-10. In fact, the Specification clearly states that one advantage of the invention is “that it enables the factory to initiate more than one work schedule/build cycle and material delivery schedule ... without the need to maintain substantial in-house inventory.” Specification at 17:14-17. Thus, “hub” is a limiting descriptor of “inventory” and makes claim 1 patentably distinguishable from the cited art.

The Examiner also cites to Manugistics in combination with Lilly and Layden for disclosing that “the material delivery schedule is based, at least in part, on in-transit inventory.” Applicants respectfully disagree. Manugistics discusses “in-transit visibility for determining where products are currently located.” Manugistics at para. 7. In contrast, claim 1 requires “in-house inventory” which is not the same as the “in-house products” described in Manugistics. The “in-house inventory” of claim 1 is used for manufacture of an item requested by a customer whereas Manugistics infers that “products” are finished goods. Manugistics at para 7. Further, Manugistics does not discuss basing the material delivery schedule on the “in-house inventory” as required by claim 1.

For the above stated reasons, claims 1-5, 8, 9, and 12-14 are not obvious in view of Lilly in view of Layden and further in view of Manugistics. Applicants respectfully request that the Examiner withdraw the rejection to these claims.

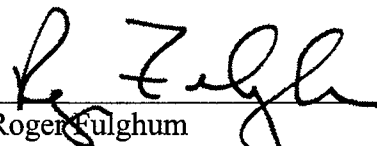
B. No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinctions discussed by Applicants are sufficient to overcome the anticipation rejections.

Conclusion

Applicants respectfully submit that pending claims 1-5, 8, 9, and 12-14 should be withdrawn and that these claims should be passed to issuance.

Respectfully submitted,



Roger Fulghum
Registration No. 39,678

Baker Botts L.L.P.
910 Louisiana
One Shell Plaza
Houston, Texas 77002-4995
(713) 229-1707

Baker Botts Docket Number: 016295.1099

Date: October 30, 2007